

RESOLUTION NO. 7778

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ESTABLISHING A TRANSIT AREA DEVELOPMENT IMPACT FEE FOR PUBLIC INFRASTRUCTURE AND IMPROVEMENTS

WHEREAS, the City Council of the City of Milpitas has previously established a development impact fee program, as set forth in Chapter 4 of Title VIII of the Milpitas Municipal Code, in order to collect revenues to defray the cost of public infrastructure and improvements necessitated by new development; and

WHEREAS, pursuant to Chapter 4 of Title VIII of the Milpitas Municipal Code, the Council may adopt development impact fees for different areas within the City by resolutions that set forth the bases for such fees and the formulae to calculate such fees and that make the appropriate findings; and

WHEREAS, on June 3, 2008, the City Council adopted Resolution No. 7760, approving the Transit Area Specific Plan, which identified basic public infrastructure needed to serve new development in the area and to maintain or improve existing levels of service for public facilities; and

WHEREAS, now the City Council wishes to create and establish a Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray the costs of constructing such public infrastructure; and

WHEREAS, in accordance with Government Code Section 66018, the City Council conducted an open and public meeting on the fee provided by this Resolution at its regularly scheduled meeting held on September 2, 2008, and notice of the time and place of this meeting, including a general explanation of this Resolution and the related developer impact fee program ordinances and a statement regarding the availability of data indicating the amount of the proposed Transit Area Development Impact Fee and the revenue sources anticipated to finance the improvements, was provided at least 14 days prior to this September 2, 2008 meeting to interested parties; and

WHEREAS, data indicating the amount of the Transit Area Development Impact Fee and the revenue sources anticipated to finance the facility was made available to the public at least ten days prior to the September 2, 2008 meeting; and

WHEREAS, the City Council has received and considered public comments, oral and written, on the proposed Transit Area Development Impact Fee at such meeting and in response to the provided notices; and

WHEREAS, the Transit Area Specific Plan included a detailed description of public facilities required to serve the Transit Area Specific Plan area and a Financing Plan, dated May 28, 2008, that contained specific fiscal and financial policies, identified public facilities costs, and recommended financing mechanisms to pay for the needed public facilities; and

WHEREAS, the City Council has considered such Financing Plan and finds that it sets forth in-depth factual grounds for the need for a Transit Area Development Impact Fee as a means of assuring that new development within the Transit Area pay their proportionate share of the costs of needed public facilities; and

WHEREAS, the City Council has also considered the Milpitas Transit Area Infrastructure Financing Technical Report ("Technical Report"), dated August 2008, pursuant to the policies contained in the Financing Plan; the Technical Report, prepared by Economic and Planning Systems, Inc., is on file with the City Clerk; and the public facilities for which the Transit Area Development Impact Fee will be used are specifically identified in the Basic Infrastructure Program, for which a schedule of costs are included in the Technical Report; and

WHEREAS, the Transit Area Specific Plan Transportation Impact Fee Study, dated June 2008 prepared by Kimley-Horn and Associates, Inc., has been incorporated into the Basic Infrastructure Program within the Technical Report; and

WHEREAS, the public facilities reflected in the Basic Infrastructure Program are needed to protect the health, safety, and general welfare within the Transit Area Specific Plan, to facilitate orderly urban development within the Transit Area Specific Plan area, and to promote economic well-being within that area and the City as a whole; and

WHEREAS, establishing fees for the purpose of obtaining funds for impact mitigation is not an essential step culminating in action which may affect the environment and is statutorily exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15273 of the CEQA Guidelines.

NOW THEREFORE, the City Council of the City of Milpitas makes the following findings and determinations based on the reports, testimony and other materials before it, including but not limited to the documents and information listed in the Recitals above, which are incorporated herein by reference:

1. The purpose of the Transit Area Development Impact Fee is to finance basic public infrastructure facilities, as identified in the Basic Infrastructure Program that are needed to provide essential public services and assure public safety for new development within the Transit Area.

2. Based on the analysis set forth in the Technical Report and the comments received thereon, there is a need to impose a development impact fee for basic infrastructure facilities identified in the Basic Infrastructure Program so that development within the Transit Area will meet the standards and policies contained in the Transit Area Specific Plan and the City's General Plan.

3. The Technical Report and facts and evidence presented to the City Council establish that there is a reasonable relationship between the public facilities, identified in the Basic Infrastructure Program, to be funded in part by the Transit Area Development Impact Fee and the types of developments described in the Specific Plan; there is a reasonable relationship between the need for the basic public infrastructure improvements to be funded by the fee and the types of development on which the fee is imposed; and there is a reasonable relationship between the amount of the fee, as set forth in this Resolution, and the costs of the needed public infrastructure facilities as they are specifically attributed to the various types of development within the Transit Area Specific Plan area.

4. The cost estimates contained in the Basic Infrastructure Program are an accurate reflection of the current construction costs for the necessary basic infrastructure facilities and the fee revenues that are expected to be generated by new development will not exceed such development's proportionate share of these costs.

5. The proposed Transit Area Development Impact Fee is consistent with the City of Milpitas General Plan and the Transit Area Specific Plan.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Milpitas that:

Section 1. General.

- A) This Resolution is adopted pursuant to California Government Code Section 66000 et seq. ("Mitigation Fee Act"), Article XI, Section 7 of the California Constitution, and the provisions of Chapter 4 of Title VIII of the Milpitas Municipal Code ("Fees for New Development").
- B) The fee established by this Resolution shall apply to new development within the Transit Area as a condition of building permit approval to defray the cost of certain public infrastructure improvements and facilities required to serve or to benefit the new development. The Transit Area is delineated by the boundaries of the adopted City of Milpitas Transit Area Specific Plan. This Resolution does not replace subdivision map exactions or other measures required to mitigate site-specific impacts of a development project; other regulatory, development and processing fees; funding required pursuant to a development agreement; funds collected pursuant to a reimbursement agreement for amounts that may exceed a development's share of public improvement costs; or assessment district proceedings, benefit assessments, or property taxes, unless so specified.

Section 2. Definitions.

- A) "Transit Area" means the approximate 437 acre area of the City covered by the Transit Area Specific Plan adopted by the Milpitas City Council on June 3, 2008.

- B) "Transit Area Development Impact Fee" means the combined fee required to implement the Basic Infrastructure Program in the amount calculated according to the formulae and methodologies set forth in this Resolution.
- C) "Basic Infrastructure Program" is the listing and schedule of public facilities that can be funded by the Transit Area Development Impact Fee which is applicable to all new development in the Transit Area. The Basic Infrastructure Program is included in the Infrastructure Financing Technical Report on file with the City Clerk.
- D) Land uses subject to the Transit Area Development Impact Fee are defined as follows:
- (1) "Residential" means all new single and multi-family dwellings.
 - (2) "Commercial" means any business engaging in the sale of merchandise and food. This category would also include those establishments providing commercial services, as defined in Milpitas Municipal Code XI-10-2.02, General Definitions. Uses in this category include but are not limited to retail stores, restaurants, banks, child care facilities and beauty salons.
 - (3) "Office" means any administrative, professional, research, medical, or similar businesses, having only limited contact with the public, provided no merchandise or services are sold on the premises except those that are incidental or accessory to the primary use. Uses in this category include but are not limited to medical clinics and offices, real estate offices, and research and development businesses.
 - (4) "Hotel" refers to the definition provided in Milpitas Municipal Code XI-10-2.02, General Definitions.
 - (5) "Other Uses" means land uses not specifically defined by this section.

Section 3. Fee Amount

A) The amount of the Transit Area Development Impact Fee is based upon the technical and financial analyses conducted as part of the Technical Report. The following schedule of base fees shall apply to all new development in the Transit Area:

- a) Residential - \$23,800 per unit
- b) Commercial - \$16.70 per square foot
- c) Office - \$25.00 per square foot
- d) Hotel - \$9,000 per room
- e) Other Uses – The fee amount for uses not specifically defined in this Resolution shall be determined by the Finance Director or his or her designee. A focused nexus study may be required of the applicant to make the determination.

B) The fee amounts listed herein shall be subject to annual adjustment, as set forth in Section 9 of this Resolution, and as otherwise allowed by law.

Section 4. Transit Area Development Impact Fee Requirements.

A) General.

- (1) The amounts and calculation of the Transit Area Development Impact Fee is based upon the following considerations:
 - 1) New development will pay only for the construction of those public facilities or where there is a reasonable relationship between the facilities funded and the benefits, demands and needs generated by the new development.
 - 2) Each type of new development shall contribute to the funding of the needed facilities in proportion to the need for the facilities created by that type of development.
 - 3) The public facilities funded by the Transit Area Development Impact Fee and the calculations resulting in the Transit Area Development Impact Fee amount are documented in the Infrastructure Financing Technical Report.

- 4) The amount of the Area Development Impact Fee shall include consideration for appropriate financing charges including any reimbursement payments made to developers or property owners pursuant to subsection 5.B (2), and shall include consideration for reimbursement of administrative costs pursuant to subsection 5.B (3).

- B) **Applications Requiring Payment of Fee – Building Permit.** A person who applies for a building permit to construct within the Transit Area Specific Plan area shall pay to the City a fee in the amount set forth in this Resolution prior to the issuance of the building permit, unless later payment is required by City ordinance or State Law.
- C) **Fee Unit.** The unit basis of the Transit Area Development Impact Fee shall be charged for each new dwelling unit, new non-residential square footage, and each new hotel room. No Transit Area Development Impact Fee shall be charged for remodeling or for an addition to an existing building creating less than 500 square feet of additional floor area. For additions greater than 500 square feet the amount of the Transit Area Development Impact Fee for that addition shall be determined according to the formula set forth in Section 4(D).
- D) **Formula for Calculating the Fee.** The Transit Area Development Impact Fee, as set forth in this Resolution, shall be determined by a formula that is based on the cost of the required infrastructure, the proportion of those costs attributable to development in the Transit Area as a whole, and each unit of development's proportional share of the Transit Area costs as a whole. These formulas are included in the Infrastructure Financing Technical Report, and shall be updated pursuant to this Resolution from time to time to reflect changes in construction costs, development schedules, availability of supplemental funds, and other relevant factors.

Section 5. Use of Fee Revenue. The Transit Area Development Impact Fee shall fund public facilities, improvements identified in the Basic Infrastructure Program as determined in the Infrastructure Financing Technical Report and any future additions and amendments to the said report, all of which are incorporated by reference into this Resolution.

- A) The City shall deposit the fees collected under this Resolution in a special fund, the Transit Area Development Impact Fee Account, designated for funding facilities listed in the Basic Infrastructure Program.
- B) The fees and all interest earned on accrued funds shall be used only to:
 - (1) Fund the costs of the public facilities specified in the Basic Infrastructure Program, or to reimburse the City for such construction if funds were advanced by the City from other sources; or
 - (2) Reimburse developers or property owners for the costs accrued when a developer or property owner constructs and dedicates to the City a public facility(ies) included in the Basic Infrastructure Program and the sum value of the facility(ies) constructed (as estimated in the Basic Infrastructure Program) exceeds the total fee liability for a given project. Reimbursements shall include appropriate financing charges and shall be based upon the Local Agency Investment Fund (LAIF) quarterly interest rate. Financing charges included in any reimbursement payments to developers or property owners shall not exceed this interest rate, as calculated by the City's Director of Finance. Reimbursements shall not be available if the value of the constructed and dedicated improvement is below the total fee liability for a given project.
 - (3) Reimburse the City of Milpitas, to offset administrative costs associated with administering and updating the Area Development Impact Fee, not to exceed two (2.0) percent of the applicable fee amount.

Section 6. Ministerial Exemptions. The following actions or conditions shall qualify for a ministerial exemption from the Transit Area Development Impact Fee without having to go through the City Council exemption process set forth in Milpitas Municipal Code VIII-4-2.04.

- A) No Transit Area Development Fee shall be due for the demolition of an existing structure and the building of a new structure on the same site where the additional area in the new structure is 500 square feet or less and no additional dwelling units are created;

- B) No Transit Area Development Impact Fee shall be due if the Transit Area Development Fee or an equivalent amount has been previously paid in full (e.g. as a requirement of a subdivision map) for a particular property and use.

Section 7. Authority for Additional Mitigation. Fees collected pursuant to this Resolution do not replace any existing development fees, except for the sewer treatment plant fee VIII-2-7.04 "Treatment Plant Fees" and the park in-lieu fee XI-01-9.07 "Amount of Fee In-Lieu of Land Dedication," or as otherwise the City Council may specifically provide, or demand or connection charges levied on a Citywide basis, or limit requirements or conditions to provide site-specific mitigation of site-specific impacts imposed upon development projects as part of the normal development review process.

Section 8. Annual Review. Pursuant to Government Code Section 66006(b) and the provisions of Chapter 4 of Title VIII of the Milpitas Municipal Code, the City Council shall review annually a report prepared by staff documenting the amount of the Transit Area Development Impact Fee, fee fund balances, the amount of fees collected, and the amount of fee funds expended (by infrastructure item as shown in the Basic Infrastructure Program) and the fund balance of the TADIF Account.

Section 9 Annual Adjustments. The total design, construction, and contingency costs of each infrastructure item in the Basic Infrastructure Program shall be automatically adjusted each fiscal year by the Finance Director or his or her designee using the Engineering News Record (ENR) Construction Cost Index for the San Francisco Bay Area. The right of way or land costs of each item shall be automatically adjusted each fiscal year using the fair market value for an acre of land in the city as determined by the City Council pursuant to XI-1-9.07-1 "Amount of Fee In-Lieu of Land Dedication".

Section 10. Periodic Update. The Infrastructure Financing Technical Report shall be updated every three to five years. This update will include a thorough review of the infrastructure costs, development activity, and collection and use of fees to that date.

Section 11. Termination of Fee. The City shall not collect the Transit Area Development Impact Fee established by this Resolution once funds sufficient to construct all improvements described in the then current Basic Infrastructure Program have been collected.

Section 12. Severability. The provisions of this resolution are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

Section 13. Effective Date. This Resolution shall take effect 60 days after the date of its adoption, as provided by Section 66017. Prior to the expiration of 15 days from the passage thereof, this Resolution shall be posted in at least three public places in the City of Milpitas.

PASSED AND ADOPTED this 2ND day of September 2008, by the following vote:

AYES: (5) Mayor Esteves, Vice Mayor Livengood, and Councilmembers Giordano, Gomez and Polanski

NOES: (0) None

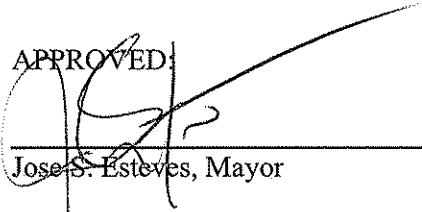
ABSENT: (0) None

ABSTAIN: (0) None

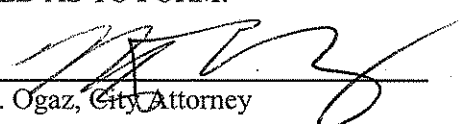
ATTEST:


Mary Lavelle, City Clerk

APPROVED:


Jose S. Esteves, Mayor

APPROVED AS TO FORM:


Michael J. Ogaz, City Attorney